Supreme Court, U.S.
FILED
JAN 20 1983
ALEXANDER L. STEVAS
CLERK

No. 82-411

IN THE

Supreme Court of the United States

October Term, 1982

NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY,

Petitioner,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF AMICUS CURIAE ON BEHALF OF EMERSON ELECTRIC COMPANY IN SUPPORT OF PETITIONER NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY

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BRIEF AMICUS CURIAE ON BEHALF OF EMERSON ELECTRIC COMPANY IN SUPPORT OF PETITIONER NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY

This brief *amicus curiae* is filed with the written consent of the parties pursuant to Supreme Court Rule 36.2 and the letters giving consent have been separately filed with the Court.

INTEREST OF THE AMICUS CURIAE

Emerson Electric Company ("Emerson") is engaged in the manufacture and sale of broadly diversified electrical products throughout the world and employs over 47,000 employees in the United States.

Emerson submits this brief as *amicus curiae* in support of Newport News Shipbuilding and Dry Dock Company ("Newport News"), since Emerson, like Newport News, was sued by the Equal Employment Opportunity Commission ("EEOC") for allegedly violating Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sections 2000e *et seq.* (1976) ("Title VII"), as amended by the Pregnancy Discrimination Act of 1978, Pub. L. No. 95-555, 92 Stat. 2076, 42 U.S.C. § 2000e(k) (Supp. IV 1980) ("PDA"), by failing to provide insurance coverage for the pregnancy-related hospital and medical expenses of spouses of male employees on the same basis that it provides coverage for the nonpregnancy-related hospital and medical expenses of the spouses of its female employees. Emerson's health benefits plans, like the health benefits plan Newport News provides for its employees, place a cap on spousal benefits for pregnancy-related expenses that does not apply to spousal benefits for nonpregnancy-related expenses.

Contrary, however, to the Fourth Circuit's decision in this case, the court in *EEOC v. Emerson Electric Co.*, 539 F. Supp. 153 (E.D. Mo.), *appeal filed*, No. 82-1647 (8th Cir. May 27, 1982), properly found that, in amending Title VII by the PDA, Congress did not intend to regulate employer health benefits plans as applied to any category of employee dependents. EEOC appealed the district court's decision upholding the validity of Emerson's health benefits plans to the United States Court of Appeals for the Eighth Circuit, which is holding the appeal in abeyance pending the Court's decision in this case.

Emerson, therefore, respectfully requests the Court to reject EEOC's interpretations of the PDA and general Title VII principles that seek to force employers nationwide to provide pregnancy-related medical coverage for spouses of male employees to the same extent that they provide coverage for the nonpregnancy-related medical expenses of spouses of employees.

SUMMARY OF ARGUMENT

The issue in this case centers on whether Congress, by enacting the PDA, intended to regulate an employer's provision of hospital and medical benefits for the pregnancies of spouses of employees. Emerson submits that the answer to this question clearly is "no". The PDA requires, in pertinent part, that "women affected by pregnancy...be treated the same for all employment related purposes...as other persons similar in their ability or inability to work." Thus, the plain language of the PDA reflects a Congressional intent that pregnant *employees* and *applicants for employment* be treated like all other *employees and applicants* in terms of their ability or inability to work. Necessarily, the women protected by the PDA must be employees or applicants. The PDA does not, by its terms, purport to regulate benefits for certain categories of employee dependents, such as spouses of male employees, and the PDA in no way changed the existing law applicable to pregnancies of employee dependents.*

The legislative history of the PDA confirms that its purpose was to eliminate arbitrary barriers to equal employment opportunity for female *employees and applicants*, and that Congress did not intend to change the law with respect to the provision of dependent or spousal benefits. Interpretations by the House and Senate Committees that considered the PDA establish that it was intended to protect only female employees and applicants and the PDA's chief sponsor and leading spokesperson in the Senate, Senator Harrison Williams, unequivocally declared on the floor of the Senate that the PDA did not apply to dependents. Finally, in adopting the PDA, Congress, *as the EEOC admitted in adopting its Final*

* Significantly, EEOC admits that an employer can, under Title VII, lawfully limit medical coverage for other dependents of employees, i.e., daughters of employees, by refusing to provide pregnancy-related medical coverage for those dependents or by putting a cap on that coverage. 29 C.F.R. Part 1604 (Appendix) (1982) (Question and Answer No. 21).

Interpretive Guidelines, 44 Fed. Reg. 23,804 (April 20, 1979), left the question of dependents' benefits to be resolved by general Title VII principles. Those principles, as enunciated in *General Electric Co. v. Gilbert*, 429 U.S. 125 (1976), *reh'g denied*, 429 U.S. 1079 (1977), and the reasoning of *Geduldig v. Aiello*, 417 U.S. 484 (1974), conclusively show that the health benefits plans of Newport News and Emerson, and similar plans of other employers throughout the country, are lawful.

EEOC's position in this case, as well as in other cases on the same issue pending around the country, fully discussed *infra*, had its origin in certain Questions and Answers on the Pregnancy Discrimination Act of 1978, 29 C.F.R. Part 1604 (Appendix) (1982). EEOC contends that "if an employer's insurance program covers the medical expenses of spouses of female employees, then it must equally cover the medical expenses of spouses of male employees, including those arising from pregnancy-related conditions."* In adopting its final Questions and Answers,

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* Questions and Answers Nos. 21 and 22, the two involved here, are as follows:

21. Q. Must an employer provide health insurance coverage for the medical expenses of pregnancy-related conditions of the spouses of male employees? Of the dependents of all employees?

A. Where an employer provides no coverage for dependents, the employer is not required to institute such coverage. However, if an employer's insurance program covers the medical expenses of spouses of female employees, then it must equally cover the medical expenses of spouses of male employees, including those arising from pregnancy-related conditions. But the insurance does not have to cover the pregnancy-related conditions of non-spouse dependents as long as it excludes the pregnancy-related conditions of such non-spouse dependents of male and female employees equally.

22. Q. Must an employer provide the same level of health insurance coverage for the pregnancy-related medical conditions of the spouses of male employees as it provides for its female employees?

A. No. It is not necessary to provide the same level of coverage for the pregnancy-related medical conditions of the

(footnote continued on next page)

EEOC explained its interpretation of the law on pregnancy benefits for dependents as follows:

> To the extent that a specific question is not directly answered by a reading of the Pregnancy Discrimination Act, existing principles of Title VII must be applied to resolve that question. The legislative history of the Pregnancy Discrimination Act states explicitly that the existing principles of Title VII law would have to be applied to resolve the question of benefits for dependents.

44 Fed. Reg. 23,804 (April 20, 1979). As explained hereafter, EEOC has now taken the directly contrary position in this litigation and others that the PDA does resolve the question of spousal pregnancy benefits.

EEOC's Guidelines, which are contrary to the agency's own initial position and which attempt to expand Title VII's protection against pregnancy-related discrimination against female employees and applicants to spouses of employees, are contrary to law, and of no force or effect. The Fourth Circuit's decision that the health benefits plan covering spouses of employees of Newport News is unlawful should therefore be reversed.

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spouses of male employees as for female employees. However, where the employer provides coverage for the medical conditions of the spouses of its employees, the level of coverage for pregnancy-related medical conditions of the spouses of male employees must be the same as the level of coverage for all other medical conditions of the spouses of female employees. For example, if the employer covers employees for 100 percent of reasonable and customary expenses sustained for a medical condition, but only covers dependent spouses for 50 percent of reasonable and customary expenses for their medical conditions, the pregnancy-related expenses of the male employee's spouse must be covered at the 50 percent level.

ARGUMENT

I.

A Limitation On Pregnancy Coverage For Spouses Of Male Employees Is Consistent With The Principles Of Title VII Enunciated In *General Electric Co. v. Gilbert* and The Reasoning Of *Geduldig v. Aiello.*

The analysis of the legality under Title VII of an employer's health benefits plans must begin with the landmark decision of the Court in *General Electric Co. v. Gilbert, supra.* There, the Court held that it was not unlawful under Title VII for an employer to offer a disability plan which provided nonoccupational sickness and accident benefits to all employees, but excluded from its coverage disabilities arising from pregnancy. The Court stated, "... an exclusion of pregnancy from a disability-benefits plan providing general coverage is not gender-based discrimination at all." 429 U.S. at 136.

In so holding, the Court applied the principles previously enunciated in *Geduldig v. Aiello, supra.* Although *Geduldig* dealt with whether the exclusion of pregnancy coverage from a disability program established under California law violated the Equal Protection Clause of the Fourteenth Amendment, the Court nevertheless applied *Geduldig's* reasoning. The Court in *Gilbert,* quoting *Geduldig,* stated:

> The California insurance program does not exclude anyone from benefit eligibility because of gender but merely removes one physical condition — pregnancy — from the list of compensable disabilities. While it is true that only women can become pregnant, it does not follow that every legislative classification concerning pregnancy is a sex-based classification like those considered in *Reed, supra,* and *Frontiero, supra.* Normally, pregnancy is an objectively identifiable physical condition with unique characteristics. Absent a showing that distinctions involving pregnancy are

> mere pretexts designed to effect an invidious discrimination against the members of one sex or the other, lawmakers are constitutionally free to include or exclude pregnancy from the coverage of legislation such as this on any reasonable basis, just as with respect to any other physical condition.
>
> The lack of identity between the excluded disability and gender as such under this insurance program becomes clear upon the most cursory analysis. The program divides potential recipients into two groups — pregnant women and nonpregnant persons. While the first group is exclusively female, the second includes members of both sexes.

429 U.S. at 134-35, *quoting* 417 U.S. at 496-97.

Relying on this reasoning, the Court in *Gilbert* went on to hold that General Electric's complete exclusion of pregnancy as a compensable disability was not gender-based by its terms, did not have a gender-based effect, and was not a pretext to effect gender-based discrimination.

It is clear that under the Court's standards enunciated in *Gilbert* and *Geduldig*, the health benefits plans of Newport News, Emerson, and similar plans of other employers throughout the country, do not discriminate against male employees in violation of Title VII. The health benefits plans for employees of Newport News and Emerson, unlike the plan for employees at issue in *Gilbert*, do not completely exclude the pregnancy-related hospital and medical expenses of male employees' spouses from coverage; they merely place a limit, for economic reasons, on the amount to be paid for these expenses. Further, the plan in *Gilbert* totally excluded from coverage the pregnancy-related disabilities of female *employees*, whereas, under the health benefits plans of Newport News and Emerson, *the limitation applies only to spouses of male employees*. It is obvious, therefore, that if a health benefits plan which completely excludes pregnancy coverage for employees, such as the plan in *Gilbert*, does not violate Title

VII, at least prior to the PDA, then employer health benefits plans that merely limit coverage of the pregnancy-related hospital and medical expenses incurred by the spouses of male employees must also be lawful.

Moreover, the health benefits plans of Newport News and Emerson are even-handed and facially neutral. The fact that the spouses of female employees do not become pregnant does not create gender-based discrimination or a gender-based effect under *Gilbert* and *Geduldig*. To paraphrase the Court in *Gilbert* and *Geduldig*, the program divides recipients into two groups — employees with pregnant spouses and employees without pregnant spouses. While the first group is exclusively male, the second includes members of both sexes. 429 U.S. at 135, *quoting* 417 U.S. at 497 n.20. Pregnancy-related disabilities of spouses constitute an additional risk, unique to male employees, and the failure to compensate them for this risk does not destroy the presumed parity of benefits, accruing to men and women alike, from the facially even-handed inclusion of risks. 429 U.S. at 139.

Further, in *EEOC v. Lockheed Missiles & Space Co.*, 680 F.2d 1243 (9th Cir.), *petition for reh'g filed*, No. 81-4542 (July 27, 1982), the United States Court of Appeals for the Ninth Circuit rejected the identical argument EEOC raises here and held that an employer health benefits plan essentially identical to the health benefits plans of Newsport News and Emerson was lawful. The court held:

> [The PDA] can be divided into two clauses separated by the semicolon. The first is simply definitional: The word 'sex' as used in § 703(a) is to be read to mean 'pregnancy, childbirth or related medical conditions.' Reading PDA against § 703(a)(1) the latter now provides that it shall be an unlawful employment practice for an employer to 'discriminate against any individual with respect to his compensation * * * because of *such individual's* * * * pregnancy, childbirth or related medical conditions.' (Emphasis supplied.) The amendment would have the same effect on

§ 703(a)(2). This can hardly be read to apply to male employees. By choosing the definitional form of amendment, Congress has expressly limited the scope of its action to women employees.

The second clause in its reference to women employees ('employment-related purposes'; 'other persons not so affected but similar in their abilitity or inability to work') clarified the Congressional intent by restating the substance of the first clause in other than definitional terms, and making it clear that its limitation to employees was not inadvertent.

The legislative history of PDA provides further support for this construction of its terms. While it does contain some contradictory expressions on the part of some members of Congress as to what they believed the legislation did or should provide in the way of dependents' benefits, the Senate Committee Report leaves no room for doubt. There it is stated:

> 'Questions were raised in the committee's deliberations regarding how this bill would affect medical coverage for dependents of employees, as opposed to employees themselves. In this context it must be remembered that the basic purpose of this bill is to protect women employees, it does not alter the basic principles of title VII law as regards sex discrimination. Rather, this legislation clarifies the definition of sex discrimination for title VII purposes. Therefore the question in regard to dependents' benefits would be determined on the basis of existing title VII principles.'

680 F.2d at 1245-46.

EEOC's tortured reasoning also has been rejected in *EEOC v. Joslyn Manufacturing and Supply Co.*, 524 F. Supp. 1141 (N.D. Ill. 1981), *appeal filed*, No. 82-1634 (7th Cir. April 14, 1982). In *Joslyn*, the court unequivocally rejected EEOC's interpretation of the PDA and its legislative history. *Id.* at 1142-43.

Thus, under ordinary principles of Title VII established in *Gilbert* and the reasoning of *Geduldig*, employer health benefits plans that do not provide for, or limit, pregnancy-related benefits for spouses of employees are nondiscriminatory in design and effect and do not violate Title VII.

II.

In Enacting The Pregnancy Discrimination Act Congress Did Not Extend Its Coverage To Spouses Or Other Dependents of Employees.

On October 31, 1978, Congress enacted the PDA. The purpose of the PDA was to prohibit an employer from excluding pregnancy coverage from its health benefits plans, *but only as those plans applied to employees.** This is so because Title VII, the statute that the PDA amended, only applies to employees and applicants. 42 U.S.C. § 2000e-2. In view of the Court's decisions in *Gilbert* and *Geduldig*, it is EEOC's burden to demonstrate that the PDA applies to benefits for dependents of employees. The language of the statute and clear expressions of legislative intent demonstrate, however, that the PDA does not apply to the limitation on spousal pregnancy benefits at issue in this case.

In the Senate Report accompanying the PDA, it was stated that "the question in regard to dependents' benefits would be determined on the basis of existing title VII principles." S. Rep. No. 331, 95th Cong., 1st Sess. 6 (1977). Thus, the PDA changed preexisting Title VII law with regard to pregnancy *only* with respect to employees and

* The PDA, by its terms, did not apply to fringe benefits programs that were in effect on October 31, 1978, until April 29, 1979. Section 2, Public Law 95-555. Accordingly, if the Court were to find, which it should not, that the PDA extends to spouses of male employees, any liability of Newport News, Emerson and employers throughout the country with similar health benefits plans should, at a maximum, be from April 29, 1979 forward.

applicants for employment. As far as spouses and other dependents of employees were concerned, the pre-PDA principles of Title VII as enunciated in *Gilbert*, adopting the reasoning of *Geduldig*, would continue to apply. As the *Lockheed* court held:

> It is thus clear that in enacting PDA, Congress had in mind the fact that a question was presented as to dependent benefits and deliberately chose not to deal with it. The Senate Report explicitly states that the basic purpose of the legislation was to protect women employees; that Congress did not regard the bill as altering the basic principles of Title VII respecting sexual discrimination and intended that those unaltered basic principles would apply in determining dependent benefits. In the eyes of Congress then, PDA did no more than provide that an exception to Title VII's basic principles was to apply in the case of women employees.

680 F.2d at 1246.

Therefore, unless it can be shown that the PDA was intended to reach spouses of employees, the challenged provisions of the health benefits plans of Newport News, Emerson and other employers around the country should be analyzed under the principles enunciated in *Gilbert* and *Geduldig*. For the reasons stated below, EEOC cannot possibly show that the Newport News and similar employer health benefits plans are inconsistent with the Court's decisions in *Gilbert* and *Geduldig* or that the PDA extends to dependents of employees.

III.

The Plain Meaning Of The Pregnancy Discrimination Act Shows That It Covers Employees And Applicants For Employment, Not Dependents of Employees.

The PDA on its face clearly prohibits discrimination based on pregnancy only with respect to employees and applicants for employment, requiring that "...women affected by pregnancy... shall be treated the same for all *employment-related purposes*, including ... fringe benefit[s], as other persons not so affected but similar in their *ability* or *inability to work*...." The emphasized phrases obviously indicate that the PDA only protects pregnant women who are employees or applicants for employment. "To determine whether a pregnant woman is being treated the same as some other person who has the similar ability or inability to work, the pregnant woman, by logical necessity, must also be an employee." *Newport News Shipbuilding and Dry Dock Co. v. EEOC*, 667 F.2d 448, 452 (4th Cir. 1981) (Hall, Circuit Judge dissenting), *aff'd en banc*, 682 F.2d 113 (4th Cir. 1982) (Haynsworth, Widener and Hall, Circuit Judges dissenting).

EEOC's Final Interpretive Guidelines distort the PDA by claiming that pregnancy is to be treated the same as all other disabilities for all employment-related purposes. However, it is not pregnancy that is to be treated the same as other disabilities for all employment-related purposes. Rather, *women* affected by pregnancy are to be treated the same for employment-related purposes as other persons similarly affected in their ability or inability to work. Obviously, such women can only be treated similarly if they are employees.

The limitation of the PDA to working women, and not spouses of male employees, apparent from the plain language of the statute, is also confirmed by the legislative history of the PDA. The clear intent of Congress in enacting the PDA was to "insure that *working women* are

protected against all forms of employment discrimination based on sex." S. Rep. No. 331, 95th Cong., 1st Sess. 3 (1977) (emphasis added). The PDA "does not change the application of title VII to sex discrimination in any other way." *Id.* at 4.

Senator Williams, chief sponsor of the Senate Bill (S. 995) that became the PDA, and Chairman of the Senate Committee on Labor and Human Resources and its Subcommittee on Labor, which considered the bill, made numerous remarks reflecting the Congressional intent to change existing Title VII law only as it applied to women who are employees and applicants.* In his foreword to the report by the Staff of the Senate Comm. on Labor and Human Resources, 96th Cong., 2d Sess., *Legislative History of the Pregnancy Discrimination Act of 1978, Pub. L. 95-555* (Comm. Print 1979), the Senator stated:

> *The Act provides an essential protection for working women.* The number of women *in the labor force* has increased dramatically in recent years. Most of these *women are working* or seeking work because of the economic need to support themselves or their families. It is expected that this trend of *increasing participation by women in the workforce* will continue in the future and that an increasing proportion of *working women* will be those who are mothers. It is essential that these women and their children be fully protected against the harmful effects of unjust employment discrimination on the basis of pregnancy.

Id. at III (emphasis added).

Senator Williams' remarks upon introducing the PDA similarly reflect the intent to protect *pregnant employees*, and not pregnant dependents of employees. "[T]he

* These remarks are entitled to great deference in determining the Congressional intent behind the PDA since "[i]t is the sponsors that we look to when the meaning of the statutory words is in doubt." *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 394-95, *reh'g denied*, 341 U.S. 956 (1951).

Supreme Court's decision ... in the case of Gilbert against General Electric Co. came as a deep disappointment to *working women* across the Nation.... Now, once again, it has become incumbent upon the Congress to act. *Working women* throughout our Nation from varied walks of life are in need of relief." 123 Cong. Rec. 7,539-40 (1977) (emphasis added).*

In a colloquy between Senator Williams and Senator Orrin Hatch during the final Senate debate on the PDA, it became unmistakably clear that the PDA was not to extend to spouses or other dependents of employees:

> Mr. HATCH: The phrase "women affected by pregnancy, childbirth or related medical conditions," ... appears to be overly broad, and is not limited in terms of employment. It does not even require that the person so affected be pregnant.
>
> Indeed, *under the present language of the bill, it is arguable that spouses of male employees are covered by this civil rights amendment....*
>
> Could the sponsors clarify exactly whom that phrase intends to cover?

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* Senator Williams' comments during the floor debate on S. 995 further emphasize that the intent was to protect female employees:

> It is most important that this protection be provided to our Nation's *working women.*
>
> • • • • •
>
> This legislation is also important because, in the long run, it will permit the 36 million *working American women* to assume their rightful place, and make a full contribution in our Nation's economy.
>
> • • • • •
>
> The central purpose of the bill is to require that *women workers* be treated equally with other employees on the basis of *their ability or inability to work* .... In this way the law will protect *women* from the full range of discriminatory practices which have adversely affected their status *in the workforce.*

123 Cong. Rec. 29,385 (1977).

Mr. WILLIAMS: With regard to more [sic] maintenance plans for pregnancy-related disabilities, *I do not see how this language could be misunderstood.*

Mr. HATCH: Because it is very broadly drafted and if we say "affected by" it, that includes all of those illustrations that I have just enumerated. *If it does not, I want to be sure that everybody knows from the record that it only refers to the woman employee who is pregnant or who becomes pregnant after her employment.*

Mr. WILLIAMS: If there is any ambiguity, with regard to incom maintenance plans, I cannot see it. '...shall be treated the same for all employment-related purposes.' *I do not see how one can read into this any pregnancy other than that pregnancy that relates to the employee, and if there is any ambiguity let it be clear here now that this is very precise. It deals with a woman, a woman who is an employee,* an employee, in a work situation where all disabilities are covered under a company plan that provides income maintenance in the event of medical disability; that her particular period of disability, when *she cannot work* because of childbirth or anything related to childbirth is excluded. *It is narrowly drawn and would not give any employee the right to obtain income maintenance as a result of the pregnancy of someone who is not an employee.*

Mr. HATCH: OK; or the effects on other people as a result of the pregnancy of any female employee.

Mr. WILLIAMS: Exactly. It does not.

Mr. HATCH: So the Senator is satisfied that, though the committee language I brought up, "woman affected by pregnancy" seems to be ambiguous, *what it means is that this act only applies to the particular*

woman who is actually pregnant, who is an employee and has become pregnant after her employment?

Mr. WILLIAMS: *Exactly.*

123 Cong. Rec. 29,643-44 (1977) (emphasis added).

It is hard to imagine a clearer expression of legislative intent. In unmistakable terms, Senator Williams, the principal sponsor, stated that the statute applied only to women employees, not dependents.

The remarks of Senator Jacob Javits, the ranking minority member of the Senate Committee on Labor and Human Resources further confirm that the PDA was intended to protect female employees and applicants, and not spouses or other dependents of employees:

> *This legislation does not represent a new initiative in employment discrimination law, neither does it attempt to expand the reach of title VII of the Civil Rights Act of 1964 into new areas of employment relationships.* Rather, this bill is simply corrective legislation, designed to restore the law with respect to pregnant *women employees* to the point where it was last year, before the Supreme Court's decision in *Gilbert v. General Electric Corp.*, 429 U.S. 125 (1976).
>
> * * *
>
> This approach represents only basic fairness for *employees* who become pregnant. *Without this legislation, they may face a series of obstacles to continuing the pregnancy to term while maintaining their jobs and their incomes. Many women temporarily disabled by pregnancy have been forced to take leave without pay or to resign.*
>
> * * *

> Mr. President, we can no longer in this country legislate with regard to *women workers* on the basis of outdated stereotypes and myths.

123 Cong. Rec. 29,387 (1977) (emphasis added).

The proceedings in the Senate and the House contain numerous similar expressions by proponents of the PDA evidencing Congressional preoccupation and concern with the status of *working women*.* Moreover, both the Senate Committee on Labor and Human Resources and the House Committee on Education and Labor, which considered the bills resulting in the PDA, made clear that their limited purpose was "to ensure that *working women* are protected against all forms of employment discrimination based on sex," S. Rep. No. 331, 95th Cong., 1st Sess. 3 (1977), and that "[t]he bill[s] would simply require that pregnant women be treated the same as *other employees* on the basis of their ability or inability to work." H.R. Rep. No. 95-948, 95th Cong., 2d. Sess. 4 (1978) (emphasis added).

Finally, the Senate Committee on Labor and Human Resources specifically addressed the issue of dependents' benefits and made it clear that the PDA does not reach that far:

> Questions were raised in the committee's deliberations regarding how this bill would affect medical coverage for dependents of employees, as opposed to employees

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* Such expressions appear in the remarks of Senator Brooke, 123 Cong. Rec. 7,541, 29,664 (1977); Senator Mathias, *id.* at 7,541-42, 29,663-64; Senator Kennedy, *id.* at 29,388-89; Congressman Hawkins, *id.* at 10,581-83 and 124 Cong. Rec. 21,435 (1978) (The PDA was introduced "specifically to define the standards which require that pregnant workers be treated the same as other employees on the basis of their ability or inability to work."); Congressman Sarasin, *id.* at 21,436-37; Congressman Green, *id.* at 21,437; Congressman Quie, *id.* at 21,439; Congressman Corrada, *id.* at 21,439; Congresswoman Chilsholm, *id.* at 21,440 ("The issue is whether or not we as leaders of this country will assure equality at the workplace for pregnant workers."); Congressman LaFalce, *id.* at 21,440-41; Congresswoman Collins, *id.* at 21,441; Congressman Whalen, *id.* at 21,441-42; Congressman Tsongas, *id.* at 21,442.

> themselves. In this context it must be remembered that the basic purpose of this bill is to *protect women employees*, it does not alter the basic principles of title VII law as regards sex discrimination. Rather, this legislation clarifies the definition of sex discrimination for title VII purposes. Therefore, *the question in regard to dependents' benefits would be determined on the basis of existing title VII principles.*

S. Rep. No. 331 at 5-6 (emphasis added).

In sum, the language of the PDA, the remarks of its chief sponsor, the remarks of other members of Congress, and the language of the Senate and House Reports that accompanied the PDA overwhelmingly indicate that the PDA was intended to protect working women employees and applicants and not the spouses or other dependents of employees.* The question of the legality of the Newport News and similar employer health benefits plans is to be resolved under the Title VII principles enunciated in *Gilbert* and the reasoning of *Geduldig* and, as stated earlier, they are not violated in any way by the limitation placed on benefits for the pregnancy-related hospital and medical expenses incurred by the spouses of employees.

IV.

The Court Owes No Deference To EEOC's Guidelines That Interpret Title VII's Protection Against Pregnancy-Related Discrimination As Extending To Spouses And Other Dependents Of Employees. These Guidelines Are Contrary To Law And Of No Force Or Effect.

It is clear that the health benefits plans of Newport News, Emerson and other employers do not violate the

* Since the additional costs incurred in extending the PDA to dependents of employees would be so great, one can reasonably expect that Congress would have taken pains to clearly express its intent that the PDA apply to dependents. It did not and the inference is readily apparent. The PDA does not apply to dependents.

principles set forth in *Gilbert* and *Geduldig*. It is also clear that the PDA does not extend the ban against pregnancy-related discrimination to spouses or other dependents of employees. Therefore, the only conceivable basis upon which a claim for relief can be premised in this case is EEOC's self-serving Questions and Answers on the Pregnancy Discrimination Act of 1978, 29 C.F.R. Part 1604 (Appendix) (1982).

EEOC's current interpretation of the PDA's legislative history and the applicability of the statute to dependents' pregnancy benefits is inconsistent with EEOC's position as set forth in its supplementary information regarding the very same Questions and Answers. This supplementary information states:

> To the extent that a specific question is not directly answered by a reading of the Pregnancy Discrimination Act, existing principles of Title VII must be applied to resolve that question. *The legislative history of the Pregnancy Discrimination Act states explicitly that the existing principles of Title VII law would have to be applied to resolve the question of benefits for dependents.* (S. Rep. No. 95-331 at 6).

44 Fed. Reg. 23,804 (April 20, 1979) (emphasis added).

In fact, in testimony before the House subcommittee that considered the PDA, Assistant Attorney General Days stated:

> The bill is to equalize opportunities for employees. It is to make certain that they are not disadvantaged in the work force by certain discriminations with respect to disabilities. *I don't understand that you reach dependents and whatever coverage there might be of dependents under plans.*

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Comm. on Education and Labor, 95th Cong., 1st Sess. 187 (1977) (emphasis added).

EEOC now belatedly takes the position that the legislative history of the PDA demonstrates an intention by Congress to resolve the question of dependents' benefits. In view of this inconsistency between EEOC's past and current interpretations of the PDA, EEOC's current interpretation of the PDA's legislative history is entitled to no weight at all.

EEOC's interpretation of general Title VII principles, as set forth in Questions and Answers Nos. 21 and 22, clearly is contrary to the pre-PDA principles enunciated in *Gilbert* and *Geduldig* and contrary to the plain language and intent of the PDA. Questions and Answers Nos. 21 and 22 are, therefore, contrary to law and of no force or effect.

Any inquiry into the weight to be accorded an EEOC guideline must start with the caution that when Congress enacted Title VII it did not confer on EEOC the authority to promulgate substantive rules or regulations. *Albermarle Paper Co. v. Moody*, 422 U.S. 405, 431 (1975); *EEOC v. Emerson Electric Co.*, 539 F. Supp. 158, 159 (E.D. Mo.), *appeal filed*, No. 82-1647 (8th Cir. May 27, 1982). Finding that Questions and Answers Nos. 21 and 22 were "contrary to the intent of Congress," the district court in *Emerson* correctly refused to defer to them. Instead, the court in *Emerson* looked to the PDA and correctly found that it only applies to employees and applicants for employment. Observing that the legislative history of the PDA clearly indicated that the question of pregnancy benefits for spouses and other dependents of employees was to be determined on the basis of existing Title VII principles, the court in *Emerson* analyzed the health benefits plans in question under the principles of *Gilbert* and *Geduldig* and found them to be lawful.

The reasoning of the court in *Emerson* is correct and should be adopted here, as it was by the courts in *Lockheed* and *Joslyn*. EEOC has presented this Court with a far-

fetched, belated, and attenuated theory of sex discrimination which is entitled to no deference at all.

CONCLUSION

The Court should reverse the decision of the United States Court of Appeals for the Fourth Circuit and reject EEOC's attempt to force employers to provide pregnancy-related medical coverage for spouses of employees to the same extent that they provide coverage for the nonpregnancy-related hospital and medical expenses of spouses of employees.

Dated: New York, New York
January 20, 1983

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